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This motion will be decided by the court commissioner at an upcoming hearing. If you do not appear at the hearing, the Court might make a decision against you without your input. In addition, you may file a written response at least 14 days before the hearing.

**IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR
DAVIS COUNTY, STATE OF UTAH, FARMINGTON DEPARTMENT**

In the matter of the marriage of:

LAUREN R. MARSH,

and

KIRK RUSSEL MARSH.

**EX PARTE MOTION TO WAIVE
MEDIATION REQUIREMENT OR IN
ALTERNATIVE COMPEL
MEDIATION AND MEMORANDUM
IN SUPPORT**

Civil No.: 184701031

Commissioner: Christina Wilson

Judge: Michael Edwards

Petitioner, Lauren Zimmer (hereinafter “Petitioner”) through her attorney, Kristy Hanson of the law firm of MacArthur Heder & Metler, PLLC, hereby motions this Court for an order to waive the mediation requirement, or in the alternative, compel Respondent, Kirk Russel Marsh, to participate in mediation. Petitioner is filing a Petition to Modify concurrently with this Motion. Pursuant to paragraph 4(E) of the prevailing *Supplemental Decree of Divorce*, the parties are required to attend mediation to resolve issues before bringing them before the Court. Significantly, the Court ordered “Each party is to pay for half of the costs of any such mediation.” Petitioner has requested through counsel that Respondent participate in mediation. Respondent has refused unless Petitioner pays for the entirety of the costs associated with mediation, which is contrary to current court orders. Petitioner requests the Court waive the requirement to mediate, or in the alternative, compel

the Respondent to participate in mediation in good faith and pay one-half of the upfront costs, so that a resolution may be reached.

MEMORANDUM

1. The parties were divorced pursuant to a *Proposed Bifurcated Decree of Divorce* entered on May 14, 2019. ***See Court File.***
2. The Court entered a *Supplemental Decree of Divorce* on November 27, 2019. ***See Court File.*** The *Supplemental Decree of Divorce* contains provisions regarding dispute resolution. Specifically, paragraph 4(E) of the *Supplemental Decree* states that “the parties will attend mediation to resolve the issue before bringing it before the Court unless it involves an emergent need for the child in question. Each party is to pay for half of the costs of any such mediation. Finally, the parties can bring unresolved matters before the Court.”
3. Several issues have arisen regarding the parties’ minor children, specifically relating to Respondent’s failure to fulfil financial obligations including child support, out-of-pocket insurance premiums, and medical expenses, Respondent’s failure to abide by the communication provisions in the *Supplemental Decree* and *Amended Supplemental Parenting Plan*, and Respondent’s failure to promote a positive relationship between each of the children and the other parent and failing to limit communication to information regarding the children in a respectful manner.
4. Petitioner attempted to resolve these issues directly with Respondent to no avail. She has attempted to schedule a mediation as follows:
 - a. On December 28, 2024, Respondent was served with a Motion to Enforce, corresponding documents, and a letter requesting mediation with a list of proposed mediators.

- b. On December 31, 2024, Respondent emailed Petitioner's counsel stating "I received your request for mediation, however, as Lauren is aware, I do not have funds to pay for mediation should Lauren agree to pay for the entire cost." ***See Email, Exhibit 1.***
5. The *Supplemental Decree* provides that the parties mediate before taking an issue to court and that each party pay for half of the costs of mediation. Mediation is not likely to resolve these issues. Mother has repeatedly tried to address these problems with Father. He either ignores her or responds with uncivil communication.
6. Therefore, Petitioner requests that the Court waive the mediation requirement. In the alternative, Petitioner requests that the Court compel Respondent to participate in mediation with a qualified mediator such as Tamara Fackrell, Meggan Castleton, Ray Harding, Lisa Jones, Sandra Dredge, or Brook Sessions, and pay half of the upfront cost. These mediators are all highly experienced and are well-versed on disputes in family law cases.
7. URCP Rule 7(l) allows for the filing of motions that may be acted on without waiting for response. As this is a procedural issue related to the waiver of a mediation requirement, it is similar in nature to the motions specifically listed in Rule 7(l)(1). If for any reason the Court is unwilling to grant this request on an ex parte basis, alternatively, Petitioner requests the Court consider this a formal motion to compel mediation and address it at the previously scheduled hearing on Mother's *Motion to Enforce Order and for Sanctions* on March 17, 2025 at 11:30 am before the Honorable Commissioner Wilson.

WHEREFORE, Petitioner requests the following as court orders herein:

- (1) That the Court issue an order waiving the mediation requirement, or in the

alternative, compel the Respondent to participate in mediation with Tamara Fackrell, Meggan Castleton, Sandra Dredge, or Brook Sessions, or other agreed upon mediator, in good faith so that the parties may work toward a mutually agreeable resolution;

(2) That Respondent pay one-half of the upfront cost of mediation;

(3) That the Court enter findings that Petitioner has substantially prevailed and award her attorney's fees;

(4) For such other and further relief as the Court deems appropriate and equitable in this matter.

DATED this 12th day of February, 2025.

/s/ Kristy L. Hanson

KRISTY L. HANSON, Attorney for Petitioner

Notice to responding party

You have a limited amount of time to respond to this motion. In most cases, you must file a written response with the court and provide a copy to the other party:

- within 14 days of this motion being filed, if the motion will be decided by a judge, or
- at least 14 days before the hearing, if the motion will be decided by a commissioner.

In some situations a statute or court order may specify a different deadline.

If you do not respond to this motion or attend the hearing, the person who filed the motion may get what they requested.

See the court's Motions page for more information about the motions process, deadlines and forms:
www.utcourts.gov/howto/filing/motions

Aviso para la parte que responde

Su tiempo para responder a esta moción es limitado. En la mayoría de casos deberá presentar una respuesta escrita con el tribunal y darle una copia de la misma a la otra parte:

- dentro de 14 días del día que se presenta la moción, si la misma será resuelta por un juez, o
- por lo menos 14 días antes de la audiencia, si la misma será resuelta por un comisionado.

En algunos casos debido a un estatuto o a una orden de un juez la fecha límite podrá ser distinta.

Si usted no responde a esta moción ni se presenta a la audiencia, la persona que presentó la moción podría recibir lo que pidió.

Vea la página del tribunal sobre Mociones para encontrar más información sobre el proceso de

Finding help The court's Finding Legal Help web page (www.utcourts.gov/howto/legalassist/) provides information about the ways you can get legal help, including the Self-Help Center, reduced-fee attorneys, limited legal help and free legal clinics.	las mociones, las fechas límites y los formularios: www.utcourts.gov/howto/filing/motions Cómo encontrar ayuda legal La página de la internet del tribunal Cómo encontrar ayuda legal (www.utcourts.gov/howto/legalassist/) tiene información sobre algunas maneras de encontrar ayuda legal, incluyendo el Centro de Ayuda de los Tribunales de Utah, abogados que ofrecen descuentos u ofrecen ayuda legal limitada, y talleres legales gratuitos.
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CERTIFICATE OF SERVICE

I hereby certify that I am employed by the law firm of MacArthur, Heder & Metler, PLLC, 4844 North 300 West, Suite 300, Provo, Utah 84604, and that in said capacity and pursuant to Rule 5(b), Utah Rules of Civil Procedure, a true and correct copy of the foregoing document was served upon the following on this 12th day of February, 2025:

PARTY	METHOD OF SERVICE
Kirk Russel Marsh 10036 Glenmere Road Fairfax, VA 22032 kirkrussel@gmail.com Respondent	☐ Hand-delivered ☐ U.S. Mail ☐ Fax ☒ E-Mail ☒ Electronic Service via MyCase

/s/ Mickala Mahaffey

Exhibit 1

From: Russel <kirkrussel@gmail.com>

Sent: Tuesday, December 31, 2024 11:14 AM

To: Kristy Hanson <kristy@mhmlawoffices.com>; Lesley Johnson <lesley@mhmlawoffices.com>

Subject: Lauren Zimmer Mediation

Ms. Hanson,

I received your request for mediation, however, as Lauren is well aware, I do not have funds to pay for mediation. I will agree to mediation should Lauren agree to pay for the entire cost.

Russ Marsh